



Appearances: National Right to Work Legal Defense Foundation, Inc. by John C. Scully, Attorney, for Robert L. Beem, et al.; Liebert, Cassidy & Frierson by Bruce A. Barsook, Attorney, for Ventura Unified School District.

DECISION

¹Charging Parties also filed an unfair practice charge against the Association (Case No. LA-CO-428) alleging that the Association had failed to comply with the dictates of the Hudson decision. A complaint issued on October 19, 1987.

exclusively represented by the Association. The District's conduct allegedly violates section 3543.5, subdivisions (a) and (d), of the Educational Employment Relations Act (EERA).²

DISCUSSION

The central issue in this case, whether a public employer has an affirmative obligation to ensure that an exclusive representative complies with the procedural requirements set out in Hudson, is identical to that in a case recently issued by the Board, San Ramon Valley Unified School District (1989) PERB Decision No. 751. That case is controlling here.³

²EERA is codified at Government Code section 3540 et seq. Unless otherwise indicated, all statutory references herein are to the Government Code. Section 3543.5, subdivisions (a) and (d), state:

It shall be unlawful for a public school employer to:

(a) Impose or threaten to impose reprisals on employees, to discriminate or threaten to discriminate against employees, or otherwise to interfere with, restrain, or coerce employees because of their exercise of rights guaranteed by this chapter.

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(d) Dominate or interfere with the formation or administration of any employee organization, or contribute financial or other support to it, or in any way encourage employees to join any organization in preference to another.

³At the request of the parties, the present case was held in abeyance pending the Board's decision in San Ramon. By letter of June 30, 1989, a Board agent informed the District that the present case was no longer in abeyance and that the District had 20 days to file its response to Charging Parties' appeal (the appeal had been filed before the case was placed in abeyance). The due date was July 25, 1989. The District's response, though

ORDER

For the reasons discussed above, the unfair practice charge in Case No. LA-CE-2625 is hereby DISMISSED WITHOUT LEAVE TO AMEND.

Chairperson Hesse and Member Shank joined in this Decision.

collective bargaining. (Ibid., at pp. 9-11.) Specifically, the Board observed that the "arm's length" relationship required by collective bargaining would render unworkable any scheme where the employer must police a union's actions, lest it be held liable for them. The cautious employer may simply refuse to deduct agency fees or refuse to include them in the contract, thereby effectively eliminating agency fees. As the collection and expenditure of agency fees are fundamentally matters between the exclusive representative and bargaining unit members, if an employer did engage in the type of policing function urged by Charging Parties, it would likely run afoul of its statutory duty to refrain from interfering in the administration of a union.⁵ Moreover, a public school employer simply does not have the authority or resources to review union procedures and determine if they are statutorily or constitutionally adequate.

⁵EERA section 3543.5, subdivision (d), states that it shall be unlawful for a public school employer to:

- (d) Dominate or interfere with the formation or administration of any employee organization, or contribute financial or other support to it, or in any way encourage employees to join any organization in preference to another.

In San Ramon, the Board found that neither Hudson nor its progeny place upon a public employer a duty to ensure the constitutional adequacy of the exclusive representative's collection and expenditure of agency fees. (See, generally, PERB Decision No. 751, at pp. 2-9.) As the Board noted in San Ramon, the employer may be a necessary party to a claim against the union for the purposes of injunctive relief. (Ibid., at p. 11.) The Board also noted that, absent an antecedent appellate court decision, it is not within PERB's authority to refuse to enforce some portion of the statute because it viewed that portion as unconstitutional.⁴ (Ibid., at p. 11.)

In addition, the Board found in San Ramon that the creation of such a duty would be incompatible with the entire notion of

placed in the regular United States mail on July 25, was not received by PERB until July 28. PERB Regulation 32135 provides that:

All documents shall be considered "filed" when actually received by the appropriate PERB office before the close of business on the last date set for filing or when sent by telegraph or certified or Express United States mail postmarked not later than the last day set for filing and addressed to the proper PERB office.

(PERB Regulations are codified at California Administrative Code, title 8, section 31001 et seq., emphasis added.)

Since the District's response was sent by regular mail, it was not filed until July 28, when it was received by the Board. No reason for the late filing was provided. We have, therefore, not considered the District's response in rendering this decision.

⁴See Article III, Section 3.5 of the California Constitution.